§ 2999-q. Accountable care organizations; requirements. 1. The commissioner shall make regulations establishing criteria for certificates of authority, quality standards for ACOs, reporting requirements and other matters deemed to be appropriate and necessary in the operation and evaluation of ACOs under this article. In making such regulations, the commissioner shall consult with the superintendent of financial services, health care providers, third-party health care payers, advocates representing patients, and other appropriate parties. Such regulations shall be consistent, to the extent practical and consistent with this article, with CMS regulations for accountable care organizations under the Medicare program.

2. Such regulations may, and shall as necessary for purposes of this article, address matters including but not limited to:

(a) The governance, leadership and management structure of the ACO that reasonably and equitably represents the ACO's participants and the ACO's patients, including the manner in which clinical and administrative systems and clinical participation will be managed;

(b) Definition of the population proposed to be served by the ACO, which may include reference to a geographical area and patient characteristics;

(c) The character, competence and fiscal responsibility and soundness of an ACO and its principals, if and to the extent deemed appropriate by the commissioner;

(d) The adequacy of an ACO's network of participating health care providers, including primary care health care providers;

(e) Mechanisms by which an ACO will provide, manage, and coordinate quality health care for its patients including where practicable elevating the services of primary care health care providers to meet patient-centered medical home standards, coordinating services for complex high-need patients, and providing access to health care providers that are not participants in the ACO;

(f) Mechanisms by which the ACO shall receive and distribute payments to its participating health care providers, which may include incentive payments (which may include medical home payments) or mechanisms for pooling payments received by participating health care providers from third-party payers and patients;

(g) Mechanisms and criteria for accepting health care providers to participate in the ACO that are related to the needs of the patient population to be served and needs and purposes of the ACO, and preventing unreasonable discrimination;

(h) Mechanisms for quality assurance and grievance procedures for patients or health care providers where appropriate, and procedures for reviewing and appealing patient care decisions;

(i) Mechanisms that promote evidence-based health care, patient engagement, coordination of care, electronic health records, including participation in health information exchanges, other enabling technologies and integrated, efficient and effective health care services;

(j) Performance standards for, and measures to assess, the quality and utilization of care provided by an ACO;

(k) Appropriate requirements for ACOs to promote compliance with the purposes of this article;

(l) Posting on the department's website information about ACOs that would be useful to health care providers and patients, including similar metrics as the commissioner publishes for other organizations such as Medicaid managed care providers under section three hundred sixty-four-j of the social services law and health homes under section three hundred sixty-five-l of the social services law;

(m) Requirements for the submission of information and data by ACOs and their participating and affiliated health care providers as necessary for the evaluation of the success of ACOs;

(n) Protection of patient rights as appropriate;

(o) The impact of the establishment and operation of an ACO, including providing that it shall not diminish access to any health care service for the population served and in the area served; and

(p) Establishment of standards, as appropriate, to promote the ability of an ACO to participate in applicable federal programs for ACOs.

3. (a) The ACO shall provide for meaningful participation in the composition and control of the ACO's governing body for ACO participants or their designated representatives.

(b) The ACO governing body shall include at least one representative of each of the following groups: (i) recipients of Medicaid, family

health plus, or child health plus; (ii) persons with other health coverage; and (iii) persons who do not have health coverage. Such representatives shall have no conflict of interest with the ACO and no immediate family member with a conflict of interest with the ACO.

(c) At least seventy-five percent control of the ACO's governing body shall be held by ACO participants.

(d) Members of the ACO governing body shall have a fiduciary relationship with the ACO and shall be subject to conflict of interest requirements adopted by the ACO and in regulations of the commissioner.

(e) The ACO's finances, including dividends and other return on capital, debt structure, executive compensation, and ACO participant compensation, shall be arranged and conducted to maximize the achievement of the purposes of this article.

4. (a) An ACO shall use its best efforts to include among its participants, on reasonable terms and conditions, any federally-qualified health center that is willing to be a participant and that serves the area and population served by the ACO.

(b) An ACO may seek to focus on providing health care services to patients with one or more chronic conditions or special needs. However, an ACO may not otherwise, on the basis of a person's medical or demographic characteristics, discriminate for or against or discourage or encourage any person or person with respect to enrolling or participating in the ACO.

(c) An ACO shall not, by incentives or otherwise, discourage a health care provider from providing or an enrollee or patient from seeking appropriate health care services.

(d) An ACO shall not discriminate against or disadvantage a patient or patient's representative for the exercise of patient autonomy.

(e) An ACO may not limit or restrict beneficiaries to use of providers contracted or affiliated with the ACO. An ACO may not require a patient to obtain the prior approval, from a primary care gatekeeper or otherwise, before utilizing the services of other providers. An ACO may not make adverse determinations as defined in article forty-nine of this chapter.

5. An ACO may provide care coordination for its participating

patients, which (a) shall include but not be limited to managing, referring to, locating, coordinating, and monitoring health care services for the member to assure that all medically necessary health care services are made available to and are effectively used by the member in a timely manner, consistent with patient autonomy; and (b) is not a requirement for prior authorization for health care services, and referral shall not be required for a member to receive a health care service.

6. (a) Subject to regulations of the commissioner: (i) an ACO may enter into arrangements with one or more third-party health care payers to establish payment methodologies for health care services for the third-party health care payer's enrollees provided by the ACO or for which the ACO is responsible, such as full or partial capitation or other arrangements; (ii) such arrangements may include provision for the ACO to receive and distribute payments to the ACO's participating health care providers, including incentive payments and payments for health care services from third-party health care payers and patients; and (iii) an ACO may include mechanisms for pooling payments received by participating health care providers from third-party payers and patients.

(b) Subject to regulations of the commissioner, the commissioner, in consultation with the superintendent of financial services, may authorize a third-party health care payer to participate in payment methodologies with an ACO under this subdivision, notwithstanding any contrary provision of this chapter, the insurance law, the social services law, or the elder law, on finding that the payment methodology is consistent with the purposes of this article.

(c) An ACO may contract with a third-party health care payer to serve as all or part of the third-party health care payer's provider network or care coordination agent, provided in that case the ACO shall be subject to all provisions of this chapter or the insurance law which are applicable to the provider network of the third-party health care payer.

7. The provision of health care services directly or indirectly by an ACO through health care providers shall not be considered the practice of a profession under title eight of the education law by the ACO.